

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE ON FORM OF BINDING PLEDGE AGREEMENT
ARISING UNDER THE GREEN BUILDING ACT

Pursuant to section 6 of the Green Building Act of 2006, effective March 8, 2007 (D.C. Law 16-234; D.C. Official Code § 6-1451.05), as amended and any implementing regulations (the “Green Building Act”), a financial security must be provided by any applicant governed by section 4(a) of the Green Building Act (D.C. Official Code § 6-1451.03(a)).

As more fully set forth in the Green Building Act and regulations promulgated thereunder, the financial security can take the form of either: (1) cash deposited in an escrow account in a financial institution in the District in the name of the applicant and the District; (2) an irrevocable letter of credit from a financial institution authorized to do business in the District; (3) a bond secured by the applicant; or (4) a binding pledge that within two years of receipt of the certificate of occupancy the applicant will fulfill or exceed the current edition of the LEED standard for commercial and institutional buildings at the certified level.

This Notice provides the form of the Binding Pledge Agreement deemed to satisfy the binding pledge requirement of the Green Building Act and regulations promulgated thereunder.

The Binding Pledge Agreement must be recorded as a covenant between the property owner and the District in the District’s land records and shall bind the property owner and any successors in title to pay any fines levied.

Questions regarding this Notice can be addressed to Mr. Rabbiah Sabbakhan, the Chief Building Official at Rabbiah.Sabbakhan@dc.gov.

The form of Binding Pledge Agreement is as follows:

THE GOVERNMENT OF THE DISTRICT OF COLUMBIA**Department of Consumer and Regulatory Affairs****BINDING PLEDGE AGREEMENT****As Security for Performance of Green Building Act Requirements**

THIS BINDING PLEDGE AGREEMENT (the "Binding Pledge") is made as of this _____ day of _____, 20____, by _____ ("Owner") on behalf of itself, its successors and assigns, in favor of the DISTRICT OF COLUMBIA, a municipal corporation (the "District").

RECITALS

A. Owner is the owner in fee simple of certain real property and improvements (collectively, the "Property") located in the District of Columbia and more particularly described in Exhibit A attached hereto and made a part hereof.

B. Section 6 of the Green Building Act of 2006, effective March 8, 2007 (D.C. Law 16-234; D.C. Official Code §6-1451.05, as amended, together with any implementing regulations, the "Green Building Act"), requires certain building projects in the District to provide evidence of financial security to assure compliance with certain LEED certification standards as a condition to the issuance by the District of the first certificate of occupancy for occupiable space at grade or above in the project (the "First Certificate of Occupancy"). The financial security may take the form of a binding pledge that, within 24 calendar months following the issuance of the First Certificate of Occupancy, the property owner will fulfill or exceed the U.S. Green Building Council's LEED standard for commercial and institutional buildings at the certified level applicable to the project at the time the building permit for the project was issued by the District of Columbia (the "LEED Standard"). Where a binding pledge constitutes the financial security vehicle, the binding pledge must be recorded as a covenant in the land records of the District.

C. The District of Columbia has issued a building permit to construct a project on the Property, as identified in Exhibit B attached hereto, that is subject to the Green Building Act (the "Project"). Exhibit B specifies, among other things, the square feet of gross floor space of the Project (using the definition of "gross floor space" in Section 199.1 of the District's Zoning Regulations). In order to ensure Owner's compliance with the applicable requirements of the Green Building Act and to allow the District to issue a First Certificate of Occupancy for the Project prior to the LEED Standard certification being issued for the Project, Owner is entering into this Binding Pledge.

NOW, THEREFORE, for and in consideration of the issuance of a certificate of occupancy for the Project by the District, Owner for itself, its successors and assigns, does hereby acknowledge, represent, covenant, agree, and warrant to the District as follows:

1. The foregoing Recitals and attached Exhibits are all hereby incorporated in and made a part of this Binding Pledge to the same extent as if herein set forth in full, provided however, that said Recitals shall not be deemed to modify the express provisions hereinafter set forth. Any term not defined in this Binding Pledge shall have the meaning ascribed to such term in the Green Building Act.

2. Owner hereby pledges that (a) the Project will comply with the applicable requirements of the Green Building Act, by obtaining certification of the Project to no less than the applicable LEED Standard, which LEED Standard is detailed in Exhibit C, by the Verification Date (as hereafter defined); and (b) Owner will provide the District with satisfactory evidence of such compliance by said Verification Date which evidence shall consist of a true copy of the LEED certification issued for the Project reflecting that at least the LEED Standard was achieved, or in lieu thereof a certification acceptable to the Director of the Department of Consumer and Regulatory (the "Director") the Project has at minimum complied with the applicable LEED Standard (the "Certification"). The "Verification Date" shall be a date that is no later than 24 calendar months after the date of issuance of the First Certificate of Occupancy, or such later date granted by the Director as an extension of the period for verification.

3. If Owner fails to provide the Certification by the Verification Date, Owner agrees to pay the District in U.S. Dollars the sum of _____, based upon *[Insert either (i) \$7.50 per square foot of gross floor space if the Project is less than 100,000 square feet of gross floor space or (ii) \$10 per square foot if the Project is at least 100,000 square feet of gross floor space, but in any case not more than \$3,000,000.00]* (the "Penalty Amount") within five (5) business days after written notification by the District with payment being made to the address specified below, subject to the adjustment set forth in Section 3.2 below.

- 3.1 Owner agrees that 100% of the Penalty Amount shall be payable to the District if Owner misses four or more points in the applicable LEED standard.
- 3.2 If Owner misses three or fewer points in the applicable LEED standard, but (a) achieves LEED certified; or (b) the Director determines the Project has complied with the Green Building Act, the parties agree that Owner shall be liable for 50% of the Penalty Amount.

4. If, by the Verification Date, Certification for the Project is received by the Director, the Binding Pledge shall be released by the District.

5. If Owner shall fail to pay the Penalty Amount under Section 3 when due, the District shall be entitled to exercise all rights and remedies available to the District for the enforcement of this Binding Pledge, and the collection of any Penalty Amount due hereunder. Owner shall pay all costs and expenses of collection, including reasonable attorney's fees.

6. The provisions of this Binding Pledge shall be deemed a covenant made by the Owner and shall burden the Property until the earlier to occur of (a) the issuance of the Certification in accordance with the LEED Standard, or (b) the collection by the District of the Penalty Amount. Upon the occurrence of (a) or (b) above, the obligations of this Binding Pledge shall be deemed satisfied and Property shall be released from the lien or encumbrance of this Binding Pledge. Within 30 days of such satisfaction, the District shall execute and deliver to Owner an instrument of termination of the Binding Pledge, in recordable form, which the Owner shall cause to be recorded among the land records of the Office of the Recorder of Deeds.

7. Owner shall, at its cost and expense, properly file and record this Binding Pledge among the land records of the Office of the Recorder of Deeds. Owner shall furnish the Director and the Office of the Attorney General with a copy of this Binding Pledge, certified by the Recorder of Deeds as a true copy of the recorded instrument, before issuance by the Director of the First Certificate of Occupancy for the Project.

8. If the Owner fails to satisfy the requirements of this Binding Pledge and the District elects to undertake legal enforcement action, and if the District shall prevail in such legal enforcement action, then Owner shall pay to the District all of the District's costs and expenses, including reasonable attorney fees, incurred in connection with District's enforcement action. If the Office of the Attorney General is counsel for the District in such legal action, the reasonable attorney fees shall be calculated based on the then applicable hourly rates established in the most current adjusted Laffey matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours employees of the Office of the Attorney General prepared for or participated in any such action.

9. Owner shall, at its sole expense, comply with all provisions of this Binding Pledge.

10. To the extent the Owner is an entity, Owner warrants that it is (i) duly organized, validly existing and in good standing under the laws of its state of formation and is qualified to do business and is in good standing under the laws of the District of Columbia, (ii) is authorized to perform under this Binding Pledge; and (iii) has all necessary power to execute and deliver this Binding Pledge.

11. The form of this Binding Pledge has been approved by the Office of the Attorney General pursuant to the Green Building Act. This Binding Pledge, and the provisions contained herein, may not be modified, amended, or terminated without the prior written consent of the District and approval by the Office of the Attorney General, such agreement to be evidenced by a document duly executed and delivered in recordable form and recorded with the Office of the Recorder of Deeds at no expense to the District.

12. The District has the right to specifically enforce this Binding Pledge.

13. This Binding Pledge shall be governed by, construed, performed and enforced in accordance with, the laws of the District of Columbia. If any action or proceeding is initiated in connection with this Binding Pledge and any and all obligations arising hereunder, the venue thereof shall be the Superior Court of the District of Columbia.

14. This Binding Pledge has been duly executed and delivered by Owner, and constitutes the legal, valid, and binding obligations of Owner, and its successors and assigns, enforceable against the then party interest with regard to the ownership of the Property at the time of any enforcement action, in accordance with its terms.

15. If any of the covenants, warranties, conditions or terms of this Binding Pledge shall be found void or unenforceable for whatever reason by any court of law or of equity, then every other covenant, condition or term herein set forth shall remain valid and binding.

16. This Binding Pledge may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

17. TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS BINDING PLEDGE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, Owner has, as of the day and year first above written, caused this Pledge Agreement to be duly signed and executed.

Owner's Legal Name:

By: _____ (Seal)
(Print or type name and title)

Owner's Address for Notices:

Acknowledgment

City/County/District of _____
State of _____, to wit:

I, _____ (*name of notary*), a Notary Public in and for the jurisdiction aforesaid, do hereby certify that _____ (*name of person signing on behalf of owner*), as the duly authorized _____ (*title of signatory*) of _____ (*name of Owner entity*), a party to the foregoing Binding Pledge Agreement, personally appeared before me and acknowledged said Binding Pledge Agreement to be the act and deed of _____ (*name of owner entity*) and that s/he delivered the same as such.

GIVEN under my hand and seal this ____ day of _____, 20__.

[NOTARIAL SEAL]

Notary Public
My commission expires:

APPROVED:

District of Columbia Office of the Attorney General
Real Estate Section

By: _____
Assistant Attorney General

Date: _____

EXHIBIT A
[LEGAL DESCRIPTION]

EXHIBIT B
[PROJECT DESCRIPTION]

EXHIBIT C
[LEED STANDARD]